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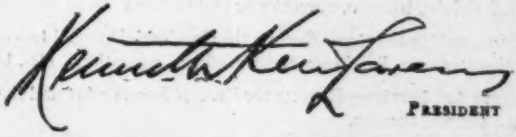
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in the organization, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

Foreign Corporation Laws

FOR the convenience of counsel at the time at which they may be interested in obtaining authority for particular corporations to do business in a state or group of states, The Corporation Trust Company will furnish without charge printed statements containing extracts from the statutes relating to the documents to be filed, fees and taxes to be paid and the statutory penalties for non-compliance. These statements have been revised to cover changes and amendments to September 1, 1920.



PRESIDENT

THE CORPORATION JOURNAL

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Talks on Foreign Corporations

No. 5: Interstate Commerce and Intrastate Commerce

(Construction work and the installation and repair of machinery)

A CORPORATION about to contract for the erection of buildings or the installation of equipment, machinery, etc., in a foreign state is immediately confronted with the problem of whether it must comply with the foreign corporation laws of the state where the work is to be performed. It may be necessary to decide this question before the contract is signed, as many states make the contract of an unqualified foreign corporation doing business in the state void. Failure to qualify prior to making contract has resulted in total or partial loss of the contract price. A recent instance of a large loss of this kind was reported in The Corporation Journal for April, 1920, the case being Phillips Co. v. Everett, 262 Fed. 341. The Phillips Company, a Wisconsin corporation, with its principal place of business in Chicago, Illinois, entered into a contract with the Springfield Realty Company, a Michigan corporation, to equip a manufacturing plant in Detroit with a system of automatic fire sprinklers, for which it was to receive $31,776. Later additional equipment was ordered making a total of $32,224. Not being paid, the Phillips Company filed a mechanics' lien on the property for the latter amount. The Springfield Realty Company went into bankruptcy, and in a proceeding to enforce this lien it was contended by the trustee in bankruptcy that the contract for the installation of the equipment was void, because the corporation had not taken out a license to do business in Michigan. This contention was sustained by the United States Circuit Court of Appeals.

Another recent instance of substantial loss to a construction company because of failure to comply with foreign corporation laws is the New Hampshire case of Enssign v. Christehansen, 109 Atl. 857 (4 Corporation Journal, page 134). In this case a Michigan corporation without first complying with the foreign corporation laws of New Hampshire sold a lighting plant which it installed in the town of Bow, New Hampshire, and accepted a note in payment. Recovery on the note was denied because of the corporation's non-compliance with the New Hampshire law.

In a United States Supreme Court case from Virginia, General Railway Signal Co. v. Virginia (No. 177 Oct. Term 1917, 3 Corporation Journal, page 201) a fine was sustained against a foreign corporation for failure to qualify where it installed signalling devices and equipment for a railroad in the state.

Furnishing and erecting steam heating apparatus in Texas was held to constitute doing business, so that failure to qualify resulted in

loss of the right by a foreign corporation to sue for the balance due on the contract. Peck-Hammond Co. v. Hamilton Independent School Dist., 181 S. W. 697. The sale and installation of a gasoline container and pump has also been held to be doing business in Texas. Bryan v. S. F. Bowser & Co., 209 S. W. 189. On the other hand the Texas Court of Civil Appeals has held that the erection of a pumping plant in the case of Dempster Mill Mfg. Co. v. Humphries, 202 S. W. 981, did not constitute doing business, because the installation of the plant appeared to be the adjustment of an isolated transaction. The United States Supreme Court reversed a Texas decision and held that the erection of ice manufacturing machinery did not require qualification of a foreign corporation. York Mfg. Co. v. Colley. (No. 200 Oct. Term 1917. 3 Corporation Journal, Page 236.)

In Tennessee it has been held that the furnishing and installing of heating and ventilating equipment in a theatre is doing business. The company employed local workmen to do part of the work. Peck-Williamson Heating & Ventilating Co. v. McKnight & Merz, 205 S. W. 419.

On the other hand a Pennsylvania case holds that a foreign corporation is not required to register where it makes a contract for furnishing and setting up fixtures, the Court stating that it was immaterial that the foreign corporation had sent its own workmen into the state or that they had employed additional local workmen to complete the contract. Williams v. Golden & Crick, 247 Pa. 397, 93 Atl. 505.

In Illinois it has been held that the sale of machinery and the furnishing of the time of a man to assist and superintend in its erection does not constitute doing business. Black-Clawson Co. v. Carlyle Paper Co., 133 Ill. App. 61.

In Alabama it was held that the installation of a soda fountain was reasonably incident to the sale and constituted interstate commerce. Puffer Mfg. Co. v. Kelly, 73 So. 403. A Wisconsin case holds that the assembling and installing of machinery is merely incidental to interstate commerce. Bowser & Co. v. Savisdusky, 142 N. W. 182.

Installation of repairs has been held to constitute doing business so as to require qualification. Haughton Elevator & Machine Co. v. Detroit Candy Co., 156 Mich. 25, 120 N. W. 18; Nernst Lamp Co. v. Conrad, 165 Mich. 604, 131 N. W. 120.

Many other cases can be found in the reports illustrating the necessity of qualification by a foreign corporation doing construction work and installing machinery, but limitations of space prevent their discussion in this article. In our next talk we expect to take up the "Storage of goods in warehouses" as constituting the "doing of business."

Domestic Corporations

Alabama.

Proceedings of a Corporation Regular on Their Face Cannot Be Attacked in a Collateral Suit. "If it was the scheme and purpose of the incorporators by organizing a $2,000 corporation and immediately increasing its capital stock to $150,000, and by this method of procedure evade the provisions of the statute that 'the amount of capital stock with which it will begin business, shall not be less than twenty-five per cent of the authorized capital, and in no case less than one thousand dollars' (Code 1907, sec. 3446 (4)), this would constitute a fraud on the law, subjecting it to a proceeding by the state looking to a cancellation of its charter. But, where as here, the proceedings are regular on their face, and the statutes have been literally complied with, this question can not be litigated in a collateral proceeding to which neither the corporation nor its incorporators are parties. The proceedings are not void on their face, but at most voidable on a direct attack." Randle v. Walker, 84 So. 551, 554.

California.

Notice of Annual Meeting for the Election of Directors May Be Dispensed with by Provision in the By-Laws. Court Takes Judicial Notice of the Fact that the only Regular Meeting of Stockholders in Most Corporations is that for the Election of Directors. A corporation adopted a by-law dispensing with notice of all regular stockholders' and directors' meetings, in accordance with the law. (Civil Code, section 302, subdivision 1.) The question arose as to whether the annual meeting of the stockholders for the election of directors was a regular stockholders' meeting. The court said that as a matter of common knowledge, the only regular meeting of stockholders of ninety-nine out of one hundred corporations was a meeting held annually at which the directors of the corporation were elected. "Consequently, while under subdivision 4 of the section, the corporation may adopt a by-law prescribing the method of giving notice of such annual election, under subdivision 1 thereof it may by like by-law dispense with notice." Guaranty Loan Co. v. Fontanel, 190 Pac. 177.

One Who Became a Stockholder Without Notice of Fraud May Bring Action Against Promoter. The defendants were promoters of a corporation organized with the intent of subsequently bringing in other stockholders and of placing its stocks and securities upon the market for sale to the public. Fraud and concealment were practised by means of which the defendants realized unreasonable profits from the organization. The plaintiff became a stockholder through the transfer to him of

stock without notice of the fraud. It was contended on behalf of the defendants that since they alone constituted the corporation at the time of the alleged fraud, the corporation itself must be deemed to have assented to the transaction, and that a subsequent purchaser of stock could not sue on behalf of the corporation to recover from the incorporators the profits so made. The court held that "Any unreasonable profits which such persons (promoters) derive from the organization of the corporation, made possible only by concealment from those who have placed their trust in the promoters, are deemed secret profits, which the corporation, or a stockholder on its behalf, may sue to recover." Beal v. Smith et al., 189 Pac. 341.

Connecticut.

Officer Who Buys Stocks with Company's Funds in His Own Name Becomes Trustee for Company. A subordinate financial officer of a company used funds of the company to buy stocks in his own name, with no intention of making investments for the company and without authority of the company or any superior officer. By reason of the transaction he was held by the court to be a constructive trustee for, as the court said: "A constructive trust is not based on intention, but arises *in invitum* for the purpose of working out justice in the most efficient manner." When he delivered the stocks to a bank as collateral for notes which he owed the bank, on the same day when the company filed its voluntary petition in bankruptcy, a fact which was known to the bank, since the bank neither gave anything or made any promise in return for the delivery of the collateral, nor did it part with any valuable consideration, or in any way alter its position for the worse, the bank was not a bona fide purchaser without notice and gained no more interest in the stocks than the defendant himself had, which was nothing. The trustee in bankruptcy of the company was allowed to recover the stock. Millard v. Green, 110 Atl. 177.

Delaware.

Right of Holder of Stock not Paid for to Set Off a Debt due him from the company ends when the company becomes insolvent, for the liability to pay for the stock as provided in section 20 of the General Corporation Law, is there for the benefit of the company. The Court of Chancery of Delaware says: "Whatever money the stockholder owes the company for his stock belongs to the creditors of a company when insolvent if all of the money be needed to pay the debts of the company. That money, or so much thereof as is necessary to pay the debts of the company in excess of its assets, must be paid to a receiver of the insolvent company before such stockholder creditor of the company is paid any part of the assets of the company. His liability to so pay exists whether an assessment on his stock be made or not, and the consequences of that liability and of his relation to the other creditors

is the same though no step has been taken to enforce the liability. He must pay like other debtors before he can share like other creditors. This question has not been distinctly raised heretofore in this state, and was not argued by counsel here; but it seems to me to be an inevitable conclusion, and therefore, one not stated by courts or textbook writers." Cooper v. Eastern Horse & Mule Co., 110 Atl. 666.

Illinois.

Purpose of Corporation Determined from Charter. Organizing Corporation Solely to Acquire and Hold Real Estate Contrary to Public Policy. "Whether the purpose of a corporation is within the scope of the statute under which the corporation is sought to be organized, is to be determined solely from its charter." Where it is clear from the facts that the only purpose in organizing a corporation was the acquiring and holding a piece of real estate, this purpose is against the Illinois statute and contrary to the public policy of the state, and the act of the corporation in leasing the property is wholly void and of no legal effect. McIlvaine et al. v. Foreman et al., 126 N. E. 749.

Michigan.

Provision in a Will Which Attempted to Create a Trust Which Hampered Representatives of Deceased in Exercising Their Own Judgment in the Management of the Affairs of a Corporation Is Void. Where a decedent, owning more than two-thirds of the authorized capital stock of a Michigan corporation, by a paragraph of his will, attempted to prescribe that his trustees who were also the executors under his will, should vote in a certain manner for a fixed period, and later a resolution was introduced to increase the capital stock of the corporation, which increase, by the terms of allotment of shares, would make the trustees minority stockholders and unable to carry out the provision of the above-named paragraph, it being agreed by all parties concerned that the increase of stock was advisable and necessary, the Supreme Court, affirming the decree of the trial court, holds that that portion of the will which interfered therewith was contrary to public policy and void. Billings et al. v. Marshall Furnace Co. et al., 177 N. W. 222.

Missouri.

Receiver of Insolvent Corporation May Recover from Directors Dividends Wrongfully Paid. The receiver of an insolvent corporation brought action against the directors to recover dividends paid out of the capital contrary to law. The directors contended that the assets should have been used to meet the liabilities at the time when the assets were turned over by the corporation to the trustee for creditors and, since this was not done, the receiver, as successor of such trustee, should be estopped from recourse against the defendants. The court

upheld the report of the referee which said: "Creditors would be placed in a decidedly unfortunate position, if, when a debtor is willing to transfer its assets to a trustee for their benefit, they, by permitting such transfer, lose all right to protect themselves otherwise, and limit themselves to the assets so transferred." The directors argued further that, as the corporation and stockholders assented to the payment of these dividends, plaintiff could not complain. The court said that the plaintiff as receiver represented the creditors as well as the stockholders and corporation he was not estopped by what the stockholders and directors alone had done. Hodde v. Nobbe, 221 S. W. 130.

New Jersey.

Stock of Manager Cannot be Held by Corporation in Lieu of Required Bond Without Agreement. Physical Delivery of Stock not Necessary to Constitute Subscriber a Stockholder. A provision of the by-laws of a corporation required that the general manager should give a suitable bond. No bond was given or exacted. The manager absconded and fled the state. In the absence of express agreement the corporation cannot hold stock which the manager had assigned for valuable consideration, in lieu of the bond or to answer any claims which the corporation might have against the manager. The Court of Chancery holds further, that where the certificates of stock have been drawn up and nothing remains to be done except the physical delivery of the certificates, the subscriber is in fact a stockholder of the corporation. In any action of the assignee of the stockholder to compel the corporation to recognize him as a stockholder, the corporation cannot set up or enforce its demand against the assignor. Lask v. Bedell, Inc., 109 Atl. 849.

New York.

Latitude of Preference Provisions. The certificate of reorganization of a New York corporation provided for changing the common stock to stock without any nominal or par value, and provided that upon liquidation, the preferred stockholders should receive 120 per cent of the par value of the stock, together with all unpaid accumulated dividends and the accrued dividends thereon, and the common stock the remainder of the assets. The Secretary of State, considering the provision illegal, refused to file the certificate. The court, in construing the statute (section 19 of the Stock Corporation Law) said: "the section provides that certificates for preferred stock, having preference as to principal, shall briefly state the amount which the holders of each of such shares shall be entitled to receive on account of the principal from the surplus assets, in preference to the other shares, and any

other rights or preferences given to the holders of such stock. These provisions show that the par value of the stock is not the precise amount which the holder may receive on account of the principal from the surplus assets upon dissolution, but that that matter may be controlled by the certificate of incorporation. The words 'preference as to principal' are used in describing the stock, as distinguishing it from stock which is preferred as to dividends only. If the Legislature had intended to limit the preference to the par value of the stock, it would have used the words "par value" instead of speaking of "Stock preferred as to principal. . . . The section does not purport to limit the preference, but only requires that it be made definite and certain." The court further holds that "upon a final dissolution and after all debts are paid, the manner in which the surplus shall be distributed among the stockholders is of concern to them only and may be a matter of agreement between them. Considering the fact that the common stockholders contribute a mere trifle to the business, perhaps $5 per share, while the preferred stockholders finance the corporation, the preferences are not unreasonable—clearly not so unjust as to be against public policy." People ex rel. Recess Exporting and Importing Corporation v. Hugo, Secretary of State. 182 N. Y. Supp. 9.

Directors of a Corporation Who Did Not Participate in Certain Ultra Vires Acts Are Not Liable for Settlement Made Upon Dissolution. A Missouri corporation had stock in and money on deposit with a trust company. The court said that the act of the company in acquiring the stock of the trust company was ultra vires. This being so, it could not be ultra vires to undo it by bringing about the liquidation and dissolution of the trust company. The appellants, minority stockholders of the corporation, who were the plaintiffs in the lower court, contended that the trust company was not dissolved according to law but that there was a voluntary dissolution, the full terms of which were not presented to the court, and that the action of the lower court was merely a confirmation of the dissolution that had already taken place. The court declined to hold the defendant directors liable for not pursuing the statutory method of dissolving the corporation from the outset. Since none of the defendants participated in the organization of the trust company and could not have prevented the deposits of money that were made with it the only test to be applied was that of honesty and good faith and reasonable care. The court found that they had acted with judgment and expediency and in good faith and on the advice of counsel. "They may not have made as good a settlement for their company as these facts indicate they should have made, but they neither had nor served any other interest, and they applied their best judgment honestly and I think we would not be warranted in calling them to account." Holmes v. Crane 191 N. Y. App. Div. 820, 833. 834. 182 N. Y. Supp. 270.

Advantages under the Delaware corporation law

Delaware is a favorable state in which to incorporate. Since 1899, when the state's corporation law was first modernized, its attitude towards corporations and their taxation has been consistently just.

Briefly, the advantages of obtaining a Delaware charter are:

1. Shares may be issued with or without par value.
2. Low initial cost; small annual franchise tax.
3. Short and simple procedure for organization.
4. Any power except banking and insurance may be obtained under the General Law.
5. Stockholders' and directors' meetings may be held without the state.
6. Directors need not be stockholders.
7. Resident director not required.
8. Disclosure of financial affairs not required in reports.
9. Stock held by non-resident individuals or corporations exempt from taxation of any kind.
10. Personal property tax not assessed on corporations not doing business in the state.

The advantageous features of the Delaware law have not been offset by radical legislative changes or by an increasing tax rate. On the contrary, the state has endeavored constantly to simplify its law and to reduce its taxes. The organization fees and the annual taxes are today lower than they were at the time the legislature first enacted the statutes which have made this state a favorable one in which to organize.

AS shown by the Secretary of State's monthly report, The Corporation Trust Company assists lawyers to organize a large percentage of all companies incorporating in Delaware.

Assistance is rendered by supplying drafts of charters, by-laws and minutes, by furnishing incorporators and by holding incorporators' meetings.

Upon approval by the attorney, The Corporation Trust Company attends also to the filing of necessary papers, to the payment of fees and to all other details incident to organization. The completed records are returned to the attorney in minute-book form.

After organization, The Corporation Trust Company furnishes the principal office required to be kept in the state, acts as agent for service of process and as custodian of the duplicate stock ledger. It also notifies the attorney of all Delaware reports, taxes, and other matters which must be attended to in order to keep the corporation in good standing in the state.

The Corporation Trust Company System maintains a well-equipped office in Wilmington, Delaware, enabling it to handle these matters with utmost expedition and efficiency, and with greatest economy.

We shall be glad to point out to lawyers the many advantages of employing the facilities of our nearest office when organizing a Delaware corporation. A copy of our pamphlet, *Business Corporations under the Laws of Delaware*, will be sent upon request.

The Corporation Trust Company and Affiliated Companies

New York	Chicago	Philadelphia
Jersey City	Los Angeles	Pittsburgh
Boston	Portland, Me.	Albany
Washington	St. Louis	Wilmington

North Dakota.

Failure to Make Annual Report and Pay Filing Fees Is Proof That Corporation Is Out of Business but Does Not Then Make Charter Subject to Cancellation. The plaintiff, organized as a corporation in North Dakota in 1911, failed to file its annual reports, accompanied by filing fees, as required by law. Its charter was cancelled by the Secretary of State on May 26, 1919. On July 23, 1919, within the six months period provided for by statute (section 4521 C. L. 1913 as amended by Chap. 4, Spec. Sess. Laws 1918), the corporation applied for reinstatement, offering to file its annual reports from 1911 to 1919, inclusive, and tendered $22.50 for filing fees, being $2.50 annually for nine years, and a reinstatement fee of $5. The Secretary of State refused to reinstate the corporation unless it paid in addition the $15 penalty for each year that the annual reports were not filed (section 4521 C. T. 1913 as amended by Chap. 4, Spec. Sess. Laws 1918) on the ground that since the corporation had been in default since 1911 —upon the failure to make reports as required, its charter became ipso facto forfeited without any action on the part of the Secretary of State and that the condition of default and the time of cancellation as provided in the statute were synonymous terms. The trial court sustained the demurrer interposed by the Secretary of State to the plaintiff's petition. The upper court reversed this decision, holding that, although the corporation was in default when it failed to make its report and to pay its filing fees, its charter was not cancelled until it was notified of default by registered letter as required by statute and the Secretary of State had then entered upon the records the cancellation of its charter. Since this act did not occur until May 26, 1919, by applying for reinstatement on July 23, 1919, the corporation came within the six-months rule and was not required to pay the additional penalty. Missouri Slope Agricultural & Fair Assn. v. Hall, Secretary of State, 177 N. W. 369.

Pennsylvania

Forming of Corporation for Practice of Dentistry. A Deputy Attorney General has rendered an opinion to the Governor to the effect that the corporation laws of the state authorizing the formation of companies for the transaction of any lawful business not otherwise specifically provided for do not include corporations for the practice of dentistry. The opinion says: "I am not unmindful of the fact that there is precedent in Pennsylvania for the granting of a charter to a corporation whose purpose is to practice dentistry. I believe, however, that such corporations are formed for the purpose of evading the provisions of the law regulating the practice of dentistry. I am of opinion that the Legislature in authorizing the formation of corporations to carry on 'any lawful business,' did not intend to include the professions." 6 Penn. Dpt. Rep. 1721.

West Virginia.

Stockholders of Insolvent Corporation May Organize New Corporation Relieved of Obligations of Old. A West Virginia corporation, while under a large indebtedness, made a contract to furnish coal to the plaintiff. A sale of its property was ordered, before the terms of the contract had been fulfilled. The defendant company was the purchaser. It was argued by the plaintiff that because the new company was formed of the same stockholders and directors that formed the old company, and purchased with knowledge of the plaintiff's contract, it was merely the successor to the old company and was bound to fulfill its contract. The Supreme Court of Appeals took the opposite view. It held (page 674) "A corporation is liable only to the extent of its assets and for aught that appears in the record, it took all the proceeds from the sale of the old company's property to pay off the debts against it. If the sale was fair and free from fraud and there is no averment or showing to the contrary, the purchaser would take it discharged of the debtor's obligations." And, further, "the stockholders of the old company if they acted in good faith * * * had a right to organize a new corporation, to buy the property of the insolvent one, and when the new company purchased at the judicial sale, it took the property free from the obligation of the plaintiff's contract." Geo. E. Warren Co. v. A. L. Black Co. et al., 102 S. E. 672.

Wisconsin.

Conditions under Which Court of Equity Will Decree Dissolution of a Corporation. Where it is apparent from the evidence in a suit brought by a minority stockholder against a corporation and its president, that the affairs of the corporation have been badly if not dishonestly handled, bringing the corporation to the verge of bankruptcy and threatening minority stockholders with the loss of their investment and that the purposes for which the company was organized are no longer possible of accomplishment, it is proper for a court of equity to appoint a receiver, wind up the affairs of the corporation, distribute its assets and decree a dissolution. This is in accord with other decisions which are inclined to disregard the early doctrine that the affairs of a corporation could not be inquired into, except by permission of the Attorney General (c.f. Gibbs v. Morgan, 9 Idaho 100, 72 Pac. 733). The court in the present case says, however, that the power of courts of equity in this respect is "one to be exercised with caution." "It is inherent in the nature of corporations that the affairs thereof are to be managed and directed as willed by the majority of the stockholders. Their decisions within the scope of legitimate discretion cannot be interfered with, and even though, in the opinion of the minority, the policies adopted by the majority are not for the best interest of the corporation, nevertheless they must accept such decisions and acquiesce

therein. They cannot complain thereof unless they be prompted by fraud and bad faith, resulting in the spoliation of the minority stockholders and ruin to the corporation." Goodwin et al. v. Milwaukee Lithographing Co. et. al. 177 N. W. 618.

Foreign Corporations

Missouri.

Suit for Foreclosure Does Not Constitute Doing Business. A trust company organized under the laws of New York, brought suit to foreclose a deed of trust on real estate in the State of Missouri. It was claimed on the part of the appellant that this could not be done unless the trust company had qualified in the State of Missouri. The United States Circuit Court of Appeals holds that the suit for foreclosure did not constitute "doing business" in the state of Missouri and that as this was the only function performed in Missouri by the trust company qualification under the foreign corporation laws was unnecessary. Lane v. Equitable Trust Co. of New York. 262 Fed. 918.

State Law Can Not Control Bringing of Suit in a United States Court by a Foreign Corporation. Although a statute provided that a foreign corporation could not foreclose a deed of trust covering property in the state without joining a resident trustee as party plaintiff, it is held that such requirement does not control the bringing of a suit in a United States court. The court says, quoting from the decision in the case of Harrison v. St. Louis & San Francisco R. R. 232 U. S. 318: "It may not be doubted that the judicial power of the United States as created by the Constitution and provided for by Congress, pursuant to its constitutional authority, is a power wholly independent of state action, and which therefore the several states may not by any exertion of authority in any form, directly or indirectly, destroy, abridge, limit or render inefficacious." Lane v. Equitable Trust Co. of New York, 262 Fed. 918.

Pennsylvania.

Maintaining Office for Sale of Stock is not Doing Business so as to subject a foreign corporation to service of process in the state. Lindsay & Co. v. Pittsburgh Tin Plate and Steel Corporation (Philadelphia Common Pleas Court, 29 District Reports, 569.)

Texas.

Conditional Sale of Buggies Constitutes Interstate Commerce. A foreign corporation may recover possession of buggies conditionally sold to a purchaser in the state, who has failed to complete his payments without showing that it has complied with the foreign corporation laws. Moore-Hustead Co. v. Joseph W. Moon Buggy Co., 221 S. W. 1032.

Taxation

Massachusetts.

Retail Sales of Goods Received from Other States is not Interstate Commerce. The plaintiff, a foreign corporation, having a usual place of business within the commonwealth of Massachusetts, petitioned the court for the abatement of a tax assessed under a statute, which provided for imposing an additional income tax on foreign corporations. The grounds of the petition were that the income on which the tax was levied was derived from interstate commerce and hence not taxable under the statute. The court decided that that part of the petitioner's business which consisted of transporting its goods bought outside the commonwealth to its place of business within the commonwealth was interstate commerce. But that interstate commerce ceased when the goods were delivered in Boston and handled by the petitioner the same as sales by any domestic dealer, "who sells from a stock of goods bought in a foreign market, and brought to his store here by interstate commerce. The exemption of the Statute does not extend to the net income here taxed simply because at a preliminary stage the milk * * * was brought into the commonwealth by interstate commerce. If such transportation in interestate commerce affords immunity from taxation in whole or in part of the petitioner, there appears to be no sound principle which would prevent the same immunity from attaching to every domestic retail dealer in respect of goods which in any stage between the constituent raw material and the finished product have been transported in interstate commerce." The court further held that the statute as thus construed violated no right secured to the petitioner by the Federal Constitution, since no direct burden was imposed upon interstate commerce. To support this view, the following extract from the decision of the United States Supreme Court in the case of United States Glue Co. v. Oak Creek, 247 U. S. 321, was relied upon. "An income tax laid generally on net incomes, not on incomes from exportation because of its source or in the way of discrimination, but just as it was laid on other income, and affecting only the net receipts from exportation after all expenses were paid and losses adjusted and the recipient of the income was free to use it as he chose, was only an indirect idea. * * * One of the ordinary and general burdens of government, from which persons and corporations otherwise subject to the jurisdiction of the states are not exempted by the Federal constitution because they happen to be engaged in commerce among the states.." H. P. Hood & Sons v. Commonwealth, 127 N. E. 497.

Michigan

No Par Value Stock of Delaware Corporation Taken at Par Value of $100 for Purposes of Franchise Tax. The Detroit Mortgage Corpo-

ration when incorporated in Delaware fixed the par value of its common stock at $10 per share. Upon that par value it paid its franchise tax to the State of Michigan. Upon amending its charter to provide for shares of no par value, the Supreme Court of Michigan holds that the corporation must pay a franchise tax upon the basis that the par value of each share is $100. The reason for this holding is that Delaware itself provides that for the purpose of its own franchise tax shares of no par value shall be taken to be of the par value of $100 each. The Supreme Court of Michigan says: "This provision was as effectively a part of the corporation's charter as though written therein, and when such corporations came to this state seeking admission here, the secretary of state was authorized and required to examine all the provisions of their charters for the purpose of following the mandate of the Legislature of this state that he collect, as a condition of here transacting business, a franchise fee upon their authorized capital stock. When he so examined such charters he found that the state of nativity of these corporations had fixed a value for taxation purposes of $100 per share. This made a basis for computing the franchise fee, and is the only basis for such computation. Unless it may be used as a basis for such computation, there is no authority to admit such corporations to do business in this state. We therefore hold that the no par value stock of corporations organized under the laws of Delaware must, for franchise fee purposes, be taken to be of the par value of $100 each. The law of Delaware so provides. That law is a part of the charters of corporations organized under it." Detroit Mortgage Corporation v. Vaughan, 178 N. W. 697.

New Jersey

Federal Estate Tax must be deducted to ascertain the clear market value of the taxable transfer under the inheritance tax law of New Jersey. Bugbee v. Ruebling (New Jersey Court of Errors and Appeals—not yet officially reported).

New York.

Transfer and Pledge of Stock as Collateral Security is not a Taxable Transfer. The United Gas and Electric Company, a corporation organized under the laws of New Jersey, desiring to issue coupon bonds, made an agreement to deposit, pledge and transfer shares of stock of the American Cities Company, with the Guaranty Trust Company, as collateral security for the payment to the purchasers of the bonds. The comptroller brought action against all three companies claiming that the transfer was within the contemplation of Section 270 of the Tax Law, requiring the attachment of stamps. The Court held that the deposit of the stock come under that portion of Section 270 which provides as follows: "It is not intended by this act to impose a tax upon an agreement evidencing the deposit of stock certificates as collateral

security for money loaned thereon, which stock certificates are not actually sold, nor upon such certificates so deposited, nor upon mere loans of stocks or the return thereof," and hence was not taxable. Eugene M. Travis, as Comptroller of the State of New York v. American Cities Company et al. 192 N. Y. App. Div. 16.

North Dakota.

Statute Imposing a Tax on Intangible Property of a Domestic Corporation located beyond the Limits of the State Does not Violate the Fourteenth Amendment. The North Dakota Statutes provide that a manufacturing corporation organized under its laws is taxed, in addition to its real and personal property, upon the aggregate market value of its outstanding stock, less the value of its real and personal property and certain indebtedness. The plaintiff in error, a domestic corporation, maintained a public office in the state, although its business was conducted wholly without the state and it had no tangible or intanigible property within the state. A tax was assessed against the company on a sum representing personal property, i.e., "bonds and stocks," which has escaped taxation for several years. It was contended that the tax was a property tax upon intangible property which must be deemed to have been located where its tangible property was, and that in taxing property beyond its limits the state was violating rights guaranteed by the Fourteenth Amendment. The Supreme Court of the United States upholding the decision of the State Supreme Court holds that since the corporation was domiciled in North Dakota "the fact that its property and business were entirely in another state did not make it any the less subject to taxation in the state of its domicile. The limitation imposed by the Fourteenth Amendment is merely that a state may not tax a resident for property which has acquired a permanent situs beyond its boundaries * * * nor has it any application to intangible property even though the property is also taxable in another state by virtue of having acquired a 'business situs' there." In answer to the argument that the situs of intangible property must be with tangible otherwise it must be held that it is in two places at once and subject to double taxation, the Court said that the Fourteenth Amendment did not prohibit double taxation. Cream of Wheat Co. v. Grand Forks County, 40 U. S. Sup. Ct. Rep. 558.

Pennsylvania.

Taxation of Foreign Corporation Engaged in Interstate Commerce. The defendant company, a foreign corporation engaged in interstate commerce, was taxed on that proportion of its capital stock represented by its property used and employed within the state for the year 1915. This property consisted of appliances for loading and unloading passengers and freight. It was contended that the attempted imposition

of the tax was unconstitutional because it put a burden on interstate commerce, and amounted to a regulation of it, a subject which rested solely with Congress. The court upheld the decision of the accounting officers of the Commonwealth and said (page 776) "Although it (the property) is used in carrying on interstate commerce, nevertheless as it is located permanently in this state and the property of other corporations is subject to a like tax, it is taxable. . According to the doctrine of the cases, such taxation cannot be regarded in conflict with the exclusive power of Congress to regulate interstate commerce." Commonwealth v. Clyde Steamship Company, 6 Dep. Rep. (Pa.) 774.

Some Important Reports for October and November

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service maintained by The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

ALABAMA—Annual Franchise Tax Statement due between November 1 and December 15. Domestic and Foreign Corporations.

ALASKA—Annual License on certain occupations due on or before November 1. Domestic and Foreign Corporations.

GEORGIA—Certified statement for registration due on or before November 1. Domestic and Foreign Corporations.

NEW MEXICO—Annual franchise tax due on or before November 30. Domestic and Foreign Corporations.

NEW YORK—Capital stock reports due between November 1 and December 15. Domestic and Foreign Corporations.

Annual franchise tax based on income of Business Corporations due between November 1 and January 1. Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual franchise fee due on or before first day of December or any time after October 15. Foreign Corporations.

Annual franchise tax due on or before first day of October or any time after August 15. Domestic Corporations.

UTAH—Corporation license tax due between November 15 and December 15. Domestic and Foreign Corporations.

Publications

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

Revenue Act of 1918 is the title of our pamphlet, which contains a complete copy of the text of the Federal tax law, approved by the President February 24, 1919.

New York Income Tax Laws as Amended.—Full text of the personal income tax law and of the corporation "income tax" law.

Issuance, Transfer and Registration of Corporate Stock is the title of a pamphlet printed to supply the demand for information on these subjects.

Reorganizations, Mergers or Consolidations. This pamphlet (official to June 25, 1920) containing excerpts from the Revenue Act of 1918, together with departmental rulings and regulations bearing on the subject, may be had by members of the bar.

Business Corporations Under the Laws of Delaware is the title of a pamphlet containing the advantages of the law, statutory requirements and forms including a description of shares without par value. The General Corporation Laws are published in a separate booklet.

Important Changes in the Corporation Laws of New Jersey. Special Corporation Journal No. 97 contains a reprint of the laws approved by the Governor of New Jersey on April 9 and 15, 1920, including repeal of the last of the so-called "seven sisters" laws.

Illinois General Corporation Act and Securities Law.

Business Corporations Under the Laws of Maine is the title of a pamphlet which contains a description of advantages of incorporation under Maine laws, features of shares without par value, statutory requiremens and forms. The text of the statutes relating to business corporations is also available in a separate pamphlet.

New York Non-Par Value Law. A reprint of Corporation Journal No. 35, contains a copy of The New York non-par value law and a copy of the certificate of incorporation of the Wisconsin Edison Company, the first large company incorporated thereunder.

Extracts from the Statutes of the Various States Relating to the Admission of Foreign Business Corporations may be had by COUNSEL who are interested in the qualification of a particular corporation in a state or group of states. Please advise which state you are interested in. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the states under consideration.

Transfer Requirements is the title of a card containing a list of the requirements to be observed in transferring various classes of stock in New York.

Illinois Transfer Requirements contains a list of requirements to be observed in Illinois.

The Corporation Journal

The object of The Corporation Journal is to furnish to corporation attorneys, and others interested, a brief account of current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney upon which he may rely for accuracy and to which he may conveniently refer. Cross references are made to preceding pages and a cumulative index is issued from time to time. The Corporation Journal is issued monthly except in July and August, and it is sent without charge to those requesting that their names be placed upon the mailing list.

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